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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2018-0106; Notice 2]

Daimler Vans USA, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of petition denial.

SUMMARY: Daimler Vans USA, LLC, (Daimler Vans) on behalf of Daimler AG, has determined that certain model year (MY) 2016-2018 Mercedes-Benz Metris vans do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less*. Daimler Vans filed a noncompliance report dated October 24, 2018, and later amended it on November 9, 2018. Daimler Vans also petitioned NHTSA on November 9, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces and explains the denial of Daimler Vans' petition.

FOR FURTHER INFORMATION CONTACT: Ahmad Barnes, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (202) 366-7236.

SUPPLEMENTARY INFORMATION:

I. Overview: Daimler Vans has determined that certain MY 2016-2018 Mercedes-Benz Metris vans do not fully comply with paragraphs S4.2.2.2 of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less* (49 CFR 571.110). Daimler Vans filed a noncompliance report dated October 24, 2018, and later amended it on November 9,

2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Daimler Vans also petitioned NHTSA on November 9, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Daimler Vans' petition was published with a 30-day public comment period, on September 16, 2019, in the **Federal Register** (84 FR 48702). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at https://www.regulations.gov. Then follow the online search instructions to locate docket number "NHTSA-2018-0106."

II. Vehicles Involved: Approximately 24,438 MY 2016-2018 Mercedes Benz-Metris vans, manufactured between June 1, 2016, and September 28, 2018, are potentially involved.

III. Noncompliance: Manufacturers are permitted to install passenger car tires on a multipurpose passenger vehicle (MPV), truck, bus, or trailer. However, when passenger car tires are used in one of these other light vehicle applications, paragraph S4.2.2.2 of FMVSS No. 110, provides that each tire's maximum load rating is to be reduced by dividing it by a factor of 1.10 before the manufacturer determines the maximum load ratings of the tires fitted to each axle. For the equipped tires on the Daimler Vans, the pre S4.2.2.2 adjustment tire specifications (based on a tire load rating with a load index of 101) yields a load capacity of 825 kg (1,818 pounds) per tire and 1,650 kg (3,637 pounds) per axle. Specifically, the subject vehicles were certified with a maximum load rating of 775 kg (1,708 pounds) per tire or 1,550 kg (3,417 pounds) combined per axle. However, after dividing each tire specification tire capacity value by 1.1 and thereby reducing the maximum load rating, the tires on the subject vehicles have an adjusted maximum load rating of 750 kg (1,653pounds) per tire and 1,500 kg (3,307 pounds) per axle – values below the certified GAWR (Gross Axle Weight Rating) for the front and rear axles.

IV. Rule Requirements: Paragraphs S4.2.2.1 and S4.2.2.2 of FMVSS No. 110 include the requirements relevant to this petition. Section S4.2.2.1 requires the sum of the maximum load ratings of the tires fitted to an axle shall not be less than the GAWR of the axle system as specified on the vehicle's certification label required by 49 CFR part 567. Section S4.2.2.2, further requires that when passenger car tires are installed on an MPV, truck, bus, or trailer, each tire's load rating is reduced by dividing it by 1.10 before determining, under paragraph S4.2.2.1, the sum of the maximum load ratings of the tires fitted to an axle.

V. Summary of Daimler Van's Petition: The following views and arguments presented in this section, "V. Summary of Daimler Vans' Petition," are the views and arguments provided by Daimler Vans and do not reflect the views of the Agency. In its petition, Daimler Vans describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety for the following reasons:

1. There is no safety risk posed with this noncompliance because the tires are designed to carry significantly more than the GAWR listed on the certification label.
2. The Metris vans also have installed the same tire size as the Metris vans sold in Europe that have the same axle weight ratings and those vehicles have performed without incident for years.
3. Despite the discrepancy in calculating the maximum load rating, the Metris vans are more than able to accommodate additional weight loaded onto the vehicle. Per the specifications provided by the tire supplier, based on the tire's load index rating of 101, each tire, in fact, has a maximum load rating of 825 kg (1,818 pounds) per tire and a combined maximum load rating of 1,650 kg (3,637 pounds) per axle. Thus, the tires were designed and manufactured to safely and effectively manage weights that are well beyond the GAWR for each axle.

4. The GAWR listed on the vehicle certification label is accurate so that a consumer relying on and following the values for the front and rear GAWR, for purposes of vehicle loading, would not be at risk of overloading the axles.
5. The tires on the Metris vans have a payload reserve of 6.5 percent at a load of 1,550 kg per axle, which is slightly below the payload reserve of 10 percent specified by FMVSS No. 110. Moreover, the tire pressure specified for each tire on the Metris Van is at least 11% higher (tire pressure reserve) then the ETRTO (European Tyre and Rim Technical Organisation) recommended tire pressure. This tire pressure reserve reduces the stress on the tire, due to reduced deflection of the tire under load.
6. Further, the Metris vans are equipped with a standard tire pressure monitoring system (TPMS) that is compliant with FMVSS No. 138. Depending on the severity of the loss of tire pressure, the Metris vans display one of three specialized TPMS warnings in the instrument panel advising the operator of the loss of pressure and how quickly the operator should take corrective action. If the tires were to experience a loss of tire pressure, the driver would be alerted to this condition and could take appropriate measures. Thus, if there were to be a loss of tire pressure, consistent with the standard, the TPMS system would warn the operator.
7. After identifying the discrepancy in the values listed on the tire and loading information placard, Daimler Vans reviewed what, if any, impact there could be on various vehicle systems that could potentially be affected by the discrepancy. This review considered the effect on steering, braking, axle strength, and crashworthiness if the operator loaded the vehicle to the maximum amount listed on the tire and loading information placard. As a result of the review, Daimler Vans was able to confirm that the discrepancy will not adversely impact any of these systems or otherwise diminish the performance or crashworthiness of the Metris vans.
8. Daimler Vans states that it is not aware of any consumer complaints or reports of accidents

or injuries related to overloading the vehicles that could reasonably be related to not derating the reinforced passenger car tires prior to certification. In addition, Metris vans sold in Europe are equipped with tires that are the same size and the vehicles have the same axle weight ratings. The European vehicles have similarly performed without incident.

9. The Agency has previously granted petitions for inconsequential noncompliance involving similar inconsistencies involving tire maximum load ratings. In 2017, the Agency granted a petition for inconsequential noncompliance where a manufacturer had incorrectly overstated the maximum occupant and cargo weight on the tire and loading information placard, by a total of 30 kg. Although on its face, this discrepancy would have appeared to have led consumers to potentially overload the vehicle, the Agency concluded that when the vehicle was loaded to the value listed on the placard, the specific tires installed on the vehicles were nonetheless technically capable of handling the overstated weight and cargo. In this instance, for one vehicle variation, the maximum loads were below the GAWR and gross vehicle weight rating (GVWR) and for another vehicle variation, the maximum loads were "essentially at the certified GAWR and GVWR values." The Agency concluded that the tires were "more than adequate" to manage the additional vehicle and cargo weight and that the vehicles could safely manage the additional weight without overload concerns. *See* 82 FR 33547 (July 20, 2017) (Grant of Petition for Decision of Inconsequential Noncompliance by Mercedes-Benz USA, LLC).
10. The noncompliance at issue here is similar to the above petition. In this case, there is also little concern of vehicle overloading because the specifications for the tires installed on the Metris vans are technically capable of managing the additional weight even without the reinforced passenger car tires having been derated.

Daimler Vans concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from

providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Daimler Vans' complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at https://www.regulations.gov and following the online search instructions to locate the docket number listed in the title of this notice.

VI. NHTSA's Analysis: The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[1]

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[2] NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. "Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future."[3] "[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work."[4]

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1 *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

2 *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

3 *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

4 *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

The intent of FMVSS No. 110 is to ensure that vehicles are equipped with tires appropriate to handle maximum vehicle loads and prevent overloading. Daimler Vans explains that due to an oversight, a 1.10 reduction on each tire's maximum load rating was not applied before the overall maximum load rating of the tires for each axle was set. As a result, the sum of the maximum load ratings of the tires fitted to each axle (after being divided by 1.10) are less than the GAWR for the axle as specified on the vehicle certification label by 110 lbs. The 1.10 factor reduction due to the use of passenger tires on a van-truck, results effectively in the tires, per FMVSS 110 S4.2.2.2, falling short of covering the vehicle's GAWR which results in a 96.8% coverage rate (3307 lbs/3417 lbs) of covering the vehicle's GAWR.

Daimler Vans additionally notated that the Agency has previously granted petitions for inconsequential noncompliance involving similar inconsistencies involving tire maximum load ratings. The referenced granted petition involves passenger vehicles where the vehicle manufacturer had incorrectly overstated the maximum occupant and cargo weight on the Tire and Loading Information Label. In short, the Agency concluded that when the vehicle was loaded to the value listed on the placard, the specific tires installed on the vehicles were nonetheless technically capable of handling the overstated weight and cargo. It should, however, be noted that in the "similar granted petition," the maximum load values were either at or below the GAWR/GVWR for the subject vehicles.

VII. NHTSA's Decision: In consideration of the foregoing analysis, NHTSA finds that Daimler Vans has not met its burden of persuasion that the subject FMVSS No. 110 noncompliance at issue is inconsequential to motor vehicle safety.

Accordingly, Daimler Vans' petition is hereby denied and Daimler Vans is consequently obligated of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Anne L. Collins,

Associate Administrator for Enforcement.

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